

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON RULES

Call to Order: By **CHAIRMAN FRED THOMAS**, on January 8, 2003 at 1:35 A.M., in Room 317A Capitol.

ROLL CALL

Members Present:

Sen. Fred Thomas, Chairman (R)
Sen. Bob Keenan, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Jon Ellingson (D)
Sen. Jim Elliott (D)
Sen. Duane Grimes (R)
Sen. Dan McGee (R)
Sen. Walter McNutt (R)
Sen. Corey Stapleton (R)
Sen. Emily Stonington (D)
Sen. Bob Story Jr. (R)
Sen. Jon Tester (D)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Legislative Branch
Fredella D. Haab, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: Senate Resolution #1, 1/6/2003

SEN. COREY STAPLETON, SD # 10, BILLINGS, opened the hearing to SR#1.

SEN. FRED THOMAS, SD 31, STEVENSVILLE, stated that SR#1 was the Senate's Rules.

SEN. STAPLETON asked for proponents. Seeing no one else in the room it was suggested they have an open discussion.

CHAIRMAN THOMAS stated all the amendments were done by **Mr. Greg Petesch, Director, Legal Services.**

The top amendment proposed on page 9, line 28 switches the order of "tabling" and "indefinitely postponing." The purpose was to put the correct motion first and use the definition "indefinitely postponing" motion instead of "tabling," because it was the proper Mason rule motion to use. The only reason to use "tabling" was to cut off debate.

SEN. EMILY STONINGTON, SD 15, BOZEMAN, asked if there was any difference in the motion of "indefinitely postponing" and did it require any number of people to bring it back? She also asked if the "indefinitely postponing" motion cut off debate.

CHAIRMAN THOMAS stated it was then a matter of reconsideration and did not cut off debate.

Mr. Petesch, Legislative Branch, said apparently in some of the senate committees there has been discussions and concern when they are "indefinitely postponing" a bill after it had failed to pass second reading. The rules provide that it was the final disposition of the bill. If "indefinitely postponing" in committee was not the final disposition of the bill, the body may still bring it to the floor for debate if the body chooses.

CHAIRMAN THOMAS stated only the full body has the authority to kill a bill and if it was not reconsidered in 24 hours, it was dead. It needed a rule suspension to bring it back to life. In committee "indefinitely postponing" was the correct motion to make if the committee doesn't want the bill to go further.

SEN. DAN MCGEE, SD 11, LAUREL, asked if he was on the floor and there was a bill in committee that has been "indefinitely postponed," can the majority vote bring it out to the floor? If it was "tabled" in committee, was it the same thing, majority vote? **CHAIRMAN THOMAS** answered yes.

SEN. WALT MCNUTT, SD 50, asked if in committee they "tabled" it or "indefinitely postponed" could you still move to reconsider your action?

CHAIRMAN THOMAS said the only deadline was transmittal deadline.

SEN. JON ELLINGSON, SD 33, MISSOULA, wanted to determine the distinction between moving to "indefinitely postponing" on the

Committee of the Whole and moving to "indefinitely postponing" in the committee. Does it have to be an action other than by the Committee of the Whole in order to subject it to the 24 hour reconsideration?

CHAIRMAN THOMAS stated it was because when a bill was killed on the floor by that motion, it was dead unless it was reconsidered within 24 hours.

SEN. STAPLETON asked if they are "indefinitely postponing" in the Committee of the Whole, that bill could not be reconsidered (after 24 hours) unless we suspend the rules for the entire biennium. That was the difference from "tabling" so there was a difference. His other point was that there still was a place for "tabling."

CHAIRMAN THOMAS referred to S50.50, sub 3 in answering **SEN. ELLINGSON'S** question. There was one other difference on the "tabling" and "indefinitely postponing" motions. "Indefinitely postponing" was designed to kill a bill. The motion for "tabling" can be used for simply saying "We're going to set this bill aside for now and we will take it up at a later point and time." There could debate the motion, not the bill.

SEN. ROBERT STORY, SD 12, PARK CITY, wanted to understand how the system worked in the Senate. If we debated a bill in committee and had a motion to "do pass" on the floor, are we "tabling" or "indefinitely postponing it?"

CHAIRMAN THOMAS said if the "do pass" fails, then nothing has happened. You need a positive motion to act on the bill. If we have a bill that fails on "do pass" the reverse motion then was made to "indefinitely postpone" it. If that was a positive vote, the bill was finally disposed of unless we move to reconsider our actions the next day. Whether the committee was "tabling" this resolution, as an example, or if it was "indefinitely postponed" in here, the floor can take it from the committee. "Indefinitely postponing" was the right motion to make in committee. It was a culture we need to create.

SEN. JIM ELLIOTT, SD 26, TROUT CREEK, asked if there was a reason for switching the position "tabling" and "indefinitely postponing"?

CHAIRMAN THOMAS stated the reason he wanted to switch these was to put them in what he thought was the right order.

SEN. ELLIOTT said "tabling" still had precedence over "indefinitely postponing."

CHAIRMAN THOMAS agreed that it did.

Mr. Petesch said S50.50 reflected this. In pointing out the citation to you and as **SEN. STAPLETON** correctly pointed out he noticed that S50.50, sub 3, which was at the bottom of page 16, refers that it may not be active during the biennium. That was a hold over from when we had annual sessions at one time. They carried bills over from one to another. He thought they could eliminate that phrase "during the biennium" and maybe remove some of the confusion. It could be considered in special session as it was a called session.

CHAIRMAN THOMAS said that they would add that as amendment #6. We would be deleting S50.50, lines 29, "during the biennium."

SEN. COCCHIARELLA, SD 32, MISSOULA, stated what was done in the past generally was they used the "tabling" motion as a catch all. To kill bills or "tabling" bills for the purpose of future action. We are going to use "indefinitely postponing" to kill a bill essentially in a committee. It was not really dead for the purposes of floor action because it can still go to the floor, the Committee of the Whole can take it from the "table" but, was it on the table?" No, it was "indefinitely postponed" right? It was "indefinitely postponed" in a committee but you are going to move to take it from the committee to the floor.

CHAIRMAN THOMAS said the proper motion was to take the bill from the Senate Education Committee and bring it to the floor. Wherever it stands in the committee, the same motion will bring it from the committee to the floor.

SEN. COCCHIARELLA wanted to clarify it a little better. In the Business Committee no one understood "indefinitely postponing" as a motion to kill a bill.

CHAIRMAN THOMAS said it was a term we use in the Senate. The reason we want the bill to stay in the committee was that it was not going to pass. We do not want it on the floor with an adverse report because then we would have that debate. So keep it in committee under "adverse" or a "tabling" motion whichever applies. The motion of preference was "indefinitely postponing." If there was some other reason to use the "tabling" motion, to cut off debate or to set the bill aside and bring it up at another time, then it was alright. To really give the bill a "do not pass" recommendation, "indefinitely postponing" was the motion we want to use.

SEN. COCCHIARELLA said "indefinitely postponing" in a committee was designed to kill a bill but it only does that if you don't

move to reconsider. So all those other motions follow as they always have.

CHAIRMAN THOMAS said the transmittal deadline was the only deadline that would kill a bill, if it was sitting in committee by "tabling" or "indefinitely postponing."

SEN. COCCHIARELLA stated if you have a bill that was "tabled", it was in limbo land and the only way it was killed was by transmittal deadline. She could see how this could be interesting when they could end up debating on the "indefinitely postponing" motion a lot longer and spend a lot more time on these issues in committee than when they were using the "tabling" motion.

SEN. STONINGTON understood the distinction between the two motions but other than Mason's was there a reason why "indefinitely postponing " was preferable?

CHAIRMAN THOMAS said the "tabling" motion does two things. It cuts off debate and was designed to say, "We are going to set this issue aside and bring it up later." That was the purpose of that motion.

SEN. STONINGTON thought the implication was that it was for later deliberations. She thought the distinction that needed to be made was what the two terms are actually intended to imply.

CHAIRMAN THOMAS truly believed that even from our House days that the purpose of "tabling" has been used to shut everybody up. We could use "indefinitely postponing" and then call for the question.

SEN. ELLIOTT said after the motion of "indefinitely postponing" has been made another member could move to "table" to cut off debate.

CHAIRMAN THOMAS said that when the "indefinitely postponing" motion was made and then the "tabling" motion comes along, that was a motion precedence. It was not a substitute motion.

{Tape: 1; Side: A; Approx. Time Counter: 24.2 - 25}

The second proposed amendments on this sheet was on page 12, line 29. Numbers 2 and 3 are designed to address an issue that **SEN. TESTER, SD 45, BIG SANDY**, brought up yesterday. They were amending the requirement of 3/4 vote in the Finance & Claims Committee so they could request a committee bill up to the 75th day by just a simple majority. The purpose was that it has been

brought to our attention that it was possible there could be a need for bills that implement provisions of the general appropriation acts. Instead of having the super majority of 3/4 in committee, the Finance & Claims Committee by a majority vote could request a bill that deals with implementing provisions of the general appropriation act.

SEN. ELLIOTT asked what was the problem of having the super majority vote?

CHAIRMAN THOMAS stated it was just a super majority of 3/4 and this would make it easier to facilitate such a need versus twenty people on a committee and six people could say "no."

SEN. ELLIOTT asked if that was a good idea for the Finance & Claims Committee, why was it not a good idea for the other committees?

CHAIRMAN THOMAS stated because of the way we are handling the budget and the need to look at several issues and areas of statutory appropriation, there could be something that was not evident now or in the next week or two that could be requested. This allows an easier flow of the process if something was found at a later date.

SEN. STONINGTON said the comment first came up from **Sen. JOHN COBB, SD 25, AUGUSTA**, in one of the joint hearings and his thinking was there are going to be probably numerous statutes that may need to be changed if the budget cuts are going to be affected. We may not discover those until well into our subcommittee process; that was the context of the suggestion and **Sen. Tester** followed up on that.

SEN. TESTER asked **Mr. Petesch** if he would enlighten him as to the thoughts and aspects of the 3/4 vote?

Mr. Petesch replied it gave him more bills to draft.

SEN. STORY agreed once you get into the budgeting, they don't know what they are going to find.

SEN. COCCHIARELLA said they should not ignore the most obvious, the minority can't control that process. Under 3/4 vote, the minority has more control.

CHAIRMAN THOMAS agreed.

SEN. ELLIOT believed if the purpose of the 3/4 vote was to give **Mr. Petesch** less work but also to give greater weight to the

value of the legislation, then he believed it should apply to the Finance & Claims committee as well. He did not understand why it needed to be easier for the Finance & Claims committee to bring forward a bill than it does for any other committee.

SEN. TESTER asked where it was in the Rules?

CHAIRMAN THOMAS stated it was in the third amendment.

SEN. ELLINGSON wanted to make sure it was clear in his own mind. If we passed this amendment then Finance & Claims can request a committee bill and the committee bills can be requested as late 75 days in the legislative session. It allows the Finance & Claims to facilitate the late request of introduction of a bill that they may seem to think was necessary.

CHAIRMAN THOMAS said the amendment number 4 proposed was like number 1, just dealing with those two motions. Number 5 was on page 16, lines 29 and 30. The House Rules Committee requested an opinion of present voting and unfortunately they got one. He didn't think they would like the conclusion. The language inserted was a definition out of Mason's describing those who paired are considered present. Via this wonderful document of opinion by our legal counsel, present was not present.

EXHIBIT (rus03a01)

Mr. Petesch stated that Mason's did not say pairing means they are present. Mason's said pairing was allowed in several legislatures and congress. Cases interpreting the use of pairs said both pair members are treated as absent for purposes of determining whether sufficient votes were there to pass the bill. If you pair with an absent member you are in essence absenting yourself also. The U.S. Supreme Court ruled on this.

SEN. ELLIOTT said that it poses a dilemma for the person who wishes to be counted as physically present when in fact that member was physically present but someone must pair. Did that mean that pairing won't be allowed, if there wasn't a member who wished to be present but absent?

CHAIRMAN THOMAS thought the result of this was if they want their vote to count, they are going to have to be there. The problem would only occur on a close vote.

SEN. ELLINGSON said for purposes of reporting votes, a paired vote, if you asked for the voting sheet, you will be shown as absent. On the books that we get at the end of the session they will show as absent. Reporters will be asking questions.

Mr. Petesch said he didn't think that was necessary. What this means was when they have a bill that passes and it was by a slim margin, if a challenge was made as to whether the bill passed by the requisite number of members present and voting as required by the Constitution then if a court was given the opportunity to review it, pairs will be treated as absent. It was that limited circumstance where it would come into play.

SEN. STORY asked if you had 50 members and 3 of them are absent, three guys pair up and you only have 44 votes and the bill passes 24-20. What the court would say was, you have to add those people that paired on the opposite side because they were present.

Mr. Petesch said it would be just the opposite way. If they were present but paired with an absent member for purposes of determining the majority members present you are treated as if you were absent. Essentially you are giving your vote away and your presence away both.

CHAIRMAN THOMAS said going to an easier example, one person was gone, one person pairs. The bill passes 26-24 and if this were challenged the result technically would be the same because it would be 25-23. If you go up the ladder to a 2/3 or 3/4 vote, that a firm number, and if you need 34 for 2/3 and one pairs and votes aye, then they really only have 33. If you pair and it comes down evenly okay, but if it was a super majority, no dice.

SEN. DUANE GRIMES, SD 20, CLANCY, asked if the logical approach was to use it for simple majority?

CHAIRMAN THOMAS stated that someone has to be willing to pair. In essence if **SEN. ELLIOTT** was gone and he wanted me to pair on a bill, fine. Simple majority vote was probably irrelevant to us because the outcome would be the same. We were cancelling our votes out if it were challenged. On a super majority vote it was a different deal because we are going to have to look for 34 and 38 of those present.

SEN. ELLIOTT remembered absentee voting was allowed in the House.

Greg Petesch said they did allow it in special session. The House ruled yesterday to say absentee voting was not allowed on third reading.

SEN. ELLINGSON asked **Mr. Petesch** when the constitution said 3/4 of the members of each body of the legislature does that mean 75 of the house members not 3/4 of the people present and voting?

Mr. Petesch said that was correct. Present and voting was used for passage of any legislation. There are different vote requirements for different specific things.

CHAIRMAN THOMAS said he would like to include in this set of amendments, unless there was a segregation, number 6 which amends page 16, S50-50, line 29, deleting the language, "during the biennium." **Sen. Thomas** closed.

Executive Action:

Motion: **SEN. MCGEE** moved that **SENATE RESOLUTION #1 DO PASS.**

CHAIRMAN THOMAS asked for any amendments.

Motion: **SEN. MCGEE** moved that **AMENDMENTS DO PASS.**

Substitute Motion: **SEN. ELLIOTT** made a substitute motion **TO SEGREGATE AMENDMENTS 2 AND 3.**

CHAIRMAN THOMAS so order the segregation. They voted on amendments 1, 4, 5, and 6. The motion carried **UNANIMOUSLY.**

SEN. ELLIOTT'S SUBSTITUTE MOTION FAILED 11-1, with SEN. ELLIOTT VOTING NAY.

SEN. STONINGTON wanted to go back to the previous discussion about sunset dates and contingencies. She asked **Mr. Petesch** what it required to have the code books finished or printed until January 1 of the following year.

Mr. Petesch said his concern was that with the continued proliferation of multiple versions of code sections caused by termination dates, late effective dates and contingency provisions, they had to continually create multiple versions of code sections. It was the most time consuming thing they did during codification. They barely made the October 1 general date for statutes publication last time. He was very concerned they would not meet the publication date so the laws will be effective before the people know what they are. If that happens, he would bring forward, if the Council was gracious enough to request it, a bill to change the general effective date of statutes to January 1 so people will know what the laws are.

SEN. STONINGTON asked **SEN. GRIMES** if he mentioned this to his committee.

CHAIRMAN THOMAS told **SEN. STONINGTON** and **SEN. GRIMES** that he was going to ask the President of the Senate to draft a memo to the

committee chairs discussing this issue and ask them to take all means to restrict the practices.

SEN. STONINGTON said that might be totally adequate. They had quite a good discussion about it and she thought they all came to recognize that it was a serious problem and that we do need to try to restrain ourselves with the use of those provisions.

SEN. COCCHIARELLA thought a warning on front of any bill with delayed times on that says, "this was what you were doing."

CHAIRMAN THOMAS said maybe a stapled sheet on the top or something you could tear off.

SEN. COCCHIARELLA said that might not be fair to people but they all needed to realize what it was doing to the system.

CHAIRMAN THOMAS said if it was needed to pass the legislation then they could consider it and deal with it. If you are willing to do a memo on this, **PRESIDENT KEENAN**, you might consider what **SEN. COCCHIARELLA** has said.

SEN. GRIMES suggested that the leadership should police it. It was going to be hard to police the House.

CHAIRMAN THOMAS said all the bills have to pass us as well. It was up to us to find them. The method that had been suggested had a lot of merit in that regard.

SEN. MCGEE asked whether they had to take action on this and on **SEN. COCCHIARELLA'S** suggestion?

CHAIRMAN THOMAS didn't think so as **PRESIDENT KEENAN** had inferred that he was willing to do a memo.

SEN. MCGEE asked if they were going to put a red light on these things?

CHAIRMAN THOMAS said it would be a practiced within the Senate. They could do that if the President so ordered.

SEN. STAPLETON asked if they could just put a slightly different color on contingency, late termination bill and sunset bills?

Mr. Petesch informed them that they already provide certain colors to be used in joint rules.

CHAIRMAN THOMAS thought that was something that could be done.

SEN. STAPLETON stated if it were a contingency you could use one of the other colors.

CHAIRMAN THOMAS said a slip on them over here was our business. They have the colors in the Joint Rules.

SEN. COCCHIARELLA said the Senate could start the positive trend. It seems to me that it should be both sides.

CHAIRMAN THOMAS stated the Senate could suggest it to the House.

SEN. STORY said on page 7, the rule S30-30, he would like to ask **Mr. Petesch** about this reference on select long range committees. They don't have a select committee, they have a sub committee that does all that work.

Mr. Petesch believed the committee was still provided for in the Joint Rules and that was why it remained in the Senate Rules. The practice for the last three sessions have been that it was a sub committee of Appropriation Finance & Claims as opposed to a joint select committee. He believed the last time it was a joint select committee **REP. BERGSAGEL** was chairing that committee. It was somewhat archaic but it was provided for regarding that so we left it in.

CHAIRMAN THOMAS asked for further discussion.

SEN. ELLINGSON said he had been given the proxy of **Sen. Tester** and he should be registered on both of those votes.

CHAIRMAN THOMAS asked for a vote on Senate Resolution #1 on a "do pass motion." **PASSED UNANIMOUSLY.**

ADJOURNMENT

Adjournment at 2:15 P.M.

SEN. FRED THOMAS, Chairman

FREDELLA D. HAAB, Secretary

FT/FH